IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

LEAH LYNN PARRISH WEBB,

Petitioner,

V.

JAMES THOMAS WEBB,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF GEORGIA

SUPPLEMENTAL BRIEF OF RESPONDENT

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BASIS FOR SUPPLEMENTAL BRIEF

During oral argument the Chief Justice requested counsel for the Respondent to submit a supplemental brief incorporating the authorities called to the Court's attention concerning the newly enacted federal "Parental Kidnaping Prevention Act of 1980". The legislative history and authorities requested are set out below.

EFFECTIVE DATE OF ACT

The new Act[1] (sponsored by Senator Malcolm Wallop of Wyoming[2] and hereinafter referred to as the Wallop measure) was signed into law by the President on December 28, 1980, and was only a portion of a more comprehensive Act "to amend title XVIII of the Social Security Act to provide for medicare coverage of pneumococcal vaccine and its administration." The delayed effective date of July 1, 1981, suggested to the Court by petitioner is found in Section Two of the Act and provides that "the amendment made by this Act shall take effect on, and apply to services furnished on or after, July 1, 1981." (emphasis added)

The legislative history of the pneumococcal vaccine bill, H. R. 8406,[3] which became the vehicle for enactment of the Wallop measure as a part of Public Law 96-611, shows that the delayed effective date provided in Section Two of Public Law 96-611 was the final section of H. R. 8406, applicable only to

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[1] Act of Dec. 28, 1980, Pub. L. 96-611, §§ 6-10.

[2] See Parental Kidnaping Prevention Act of 1979, S. 105: Joint Hearing Before the Subcomm. on Criminal Justice of the Senate Comm. on the Judiciary and the Subcomm. on Child and Human Development of the Senate Comm. on Labor and Human Resources, 96th Cong., 2d Sess. 133 (1980) (Testimony of Professor Russell M. Coombs) (hereinafter cited as Senate Joint Hearing).

[3] H. R. 8406, 96th Cong., 2d Sess. (1980).

Section One, until the Wallop measure and various other provisions, none of them dealing with pneumococcal vaccine, were added to the bill on the Senate floor, as new Sections Three through Eleven.[4] They were added without discussion of the applicability of Section Two to the new sections.[5] The legislative intent that Section Two would delay the effectiveness of Section One but not of Sections Three through Eleven is shown also by the fact that Sections 5(c) and 11(a) of Public Law 96-611 specify effective dates for various provisions of Sections Five and Eleven, yet Section Two provides no exceptions for them.[6]

The legislative history of the other bills in which the Wallop measure was processed points to the same conclusion.

Each time that a bill containing the Wallop measure also contained a generally delayed effective date, the legislative history of the bill suggests either inattention to the specific question of whether the effectiveness of the Wallop measure should be delayed or an intent to exempt the Wallop measure from the general delay. The first such occasion was January 25 and 30, 1978, when the Wallop measure was added to the criminal code bill on the Senate floor without discussion of whether the delayed effective date of that bill would be applicable to the portions of the Wallop measure that would create no new crime.[7] The second time was on January 17, 1980, when the Senate Judiciary Committee reported another criminal code bill, specifically excepted the pertinent sections of the Wallop measure from the general provision delaying the effective date

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[4] 126 Cong. Rec. S. 16498, 16504-08 (daily ed. Dec. 13, 1980).

[5] Id.

[6] Act of Dec. 28, 1980, Pub. L. 96-611, §§ 2, 5(c), 11(a).

[7] 124 Cong. Rec. S. 860 (daily ed. Jan. 30, 1978); 124 Cong. Rec. S. 498-503 (daily ed. Jan. 25, 1978).

of the Act, and provided instead that they would take effect on October 1, 1980, or at enactment (which was not expected to occur for at least several months), whichever occurred later.[8] The third time was on September 25, 1980, when the House Judiciary Committee reported a criminal code bill with a delayed effective date and without any discussion of the applicability of the delay to the Wallop measure.[9]

Those three criminal code bills were extremely long and complex, and in such contexts inattention to the applicability of delayed effective dates to the Wallop measure is not surprising. There is a marked contrast between those bills and the occasions on which the Wallop measure was processed as an individual bill or as part of another vehicle shorter and more manageable than the criminal code bills.

No delay in the effectiveness of the Wallop measure was provided when it was introduced by Senator Wallop as an individual bill (S. 105),[10] when very similar individual bills (H. R. 1290;[11] 3654;[12] and 7291[13]) were introduced in the House,

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[8] S. 1722, 96th Cong., 1st Sess. 107-08, 335, 340-42, 355-56 (Jan. 17, 1980); S. Rep. No. 96-553, 96th Cong., 1st Sess. 583-87, 1217, 1253-55, 1260-61, 1263, 1269 (Jan. 17, 1980). That exception was created by the Senate committee at the suggestion of Professor Russell M. Coombs. Parental Kidnaping Hearing Before the Subcomm. on Crime of the House Comm. on the Judiciary, 96th Cong. 2d Sess., Serial No. 73, at 132 et seq. and n. 14 (1980) (statement of Professor Russell M. Coombs) (hereinafter cited as House Parental Kidnaping Hearing).

[9] H. R. 6915, 96th Cong., 2d Sess. 460-63 (Sep. 25, 1980); H. R. Rep. No. 96-1396, 96th Cong., 2d Sess. 638-40 (Sep. 25, 1980).

[10] S. 105, 96th Cong., 1st Sess. (1979); 125 Cong. Rec. S. 372-95 (daily ed. Jan. 23, 1979).

[11] H. R. 1290, 96th Cong., 1st Sess., 125 Cong. Rec. H227 (daily ed. Jan. 23, 1979).

[12] H. R. 3654, 96th Cong., 1st Sess., 125 Cong. Rec. H2264 (daily ed. Apr. 23, 1979).

[13] H. R. 7291, 96th Cong., 2d Sess., 126 Cong. Rec. H3386 (daily ed. May 7, 1980).

when the Wallop measure was added to the domestic violence bill (H. R. 2977) on the Senate floor on August 25, 1980,[14] when H. R. 2977 passed the Senate on September 4, 1980,[15] when the bill was approved by the conference committee on September 25, 1980,[16] or when the House approved the conference report[17] on October 1, 1980.[18]

S. 3259, a bankruptcy bill containing the Wallop measure, as introduced on December 9, 1980, and passed by the Senate the same day, specified a delayed effective date for certain sections on other subjects but provided for no delay in the effectiveness of the Wallop measure.[19]

In the five sets of Senate and House hearings held in 1977, 1978, 1979, and 1980 when testimony concerning the Wallop measure was received, not once did any witness, or any of the various Senators and Representatives who expressed opinions concerning the measure, suggest a delay in the effectiveness of the provisions that created no new federal crime.[20]

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[14] 126 Cong. Rec. S11455, 11465-69, 11475, 11483-99 (daily ed. Aug. 25, 1980).

[15] 126 Cong. Rec. S12051-52, 12055-56, 12061, 12066 (daily ed. Sep. 4, 1980).

[16] H. R. Rep. No. 96-1401, 96th Cong., 2d Sess. (1980).

[17] 126 Cong. Rec. H9763-75 (daily ed. Sep. 25, 1980).

[18] 126 Cong. Rec. H10400-08 (daily ed. Oct. 1, 1980).

[19] S. 3259, 96th Cong., 2d Sess. 118-31, 156 (1980); 126 Cong. Rec. S15943-45, 15960 (daily ed. Dec. 9, 1980).

[20] House Parental Kidnaping Hearing; Senate Joint Hearing; Addendum, Parental Kidnaping Prevention Act of 1979, S. 105: Joint Hearing Before the Subcomm. on Criminal Justice of the Senate Comm. on the Judiciary and the Subcomm. on Child and Human Development of the Senate Comm. on Labor and Human Resources, 96th Cong., 2d Sess. 271-72 (1980) (question of Senator Charles McC. Mathias, Jr., and reply of Professor Russell M. Coombs); Reform of the Federal Criminal Laws: Hearings Before the Senate Comm. on the Judiciary, 96th Cong., 1st Sess., Part XIV, at 9995, 10626-37, 10640, 10669-74 (1979); Parental Kidnaping 1979: Hearings Before the Subcomm. on Child and Human Development of the Senate Comm. and Labor and Human Resources, 96th Cong., 1st Sess. (Apr. 17, 1979); Legislation to Revise and Recodify Federal Criminal Laws: Hearings on H.R. 6869 Before the Subcomm. on Criminal Justice on the House Comm. on the Judiciary, 95th Cong., 1st and 2d Sess., Serial No. 52, Parts 1-3, at 195-99, 399-409, 720-35, 1002-31, 1314-15, 2561-63, 2729-30, 2807-10, 2816-20, 2848-50, 2871-75 (1977-78).

On the only occasion during the hearings when the effective date of those provisions was specifically discussed, Professor Russell M. Coombs informed the House Subcommittee on Crime that the Senate Judiciary Committee had at his suggestion excepted the civil provisions of the Wallop measure from the general delay of the effective date of the then-pending Senate criminal code bill, and described that treatment of the matter as "a major improvement" over provisions substantially delaying their effectiveness.[21]

It is especially significant that the report of the domestic violence conference committee approved a version of the Wallop measure that would have taken effect immediately upon enactment.[22] The conference committee made substantive and unique changes in certain aspects of the Wallop measure as a result of negotiation and compromise between Senate and House members of the committee.[23] The actions of the Senate and House in incorporating in Public Law 96-611 precisely the language of the conference committee product, rather than any of the other versions of the Wallop measure, make it clear that the intention was to enact the Wallop measure in the form that had been agreed on by representatives of the two Houses in the conference committee and had been later approved by the whole House. Indeed, when H. R. 8406 was being considered on the House floor, Representative Ullman, who was managing the bill, relied upon the identity of the version of the Wallop measure in the bill with the version that had been adopted by the conference committee and later approved by the House as

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[21] House Parental Kidnaping Hearing at 132 et seq. and H. 14 (Statement of Professor Russell M. Coombs).

[22] See note 16 supra.

[23] Compare H. R. Rep. No. 96-1401, 96th Cong., 2d Sess. (1980), with 126 Cong. Rec. S11455, 11465-69, 11475, 11483-99 (daily ed. Sep. 25, 1980), and H. R. 6915, 96th Cong., 2d Sess. 460-63 (Sep. 25, 1980).

the reason for finding the inclusion of the Wallop measure in H. R. 8406 to be "non-controversial in any sense."[24] The inference is very strong that both Houses intended the Wallop measure to be immediately effective when enacted as part of Public Law 96-611, just as it would have been if the conference report had been approved by the Senate and signed by the President.

APPLICABILITY OF ACT TO THIS CASE

Since the Act became effective subsequent to the decision of the Georgia Supreme Court, its applicability to this specific case should not, in the first instance, be considered by this Court.[25]

Even if not applicable to this specific case, the impact of the Act upon the question raised in the certiorari petition is so great as to render the present case of only isolated significance.[26]

The appropriate disposition for this Court to make is to dismiss the writ of certiorari as improvidently granted and to leave the parties free to seek any further relief needed at such time as this Act applies to them or the appropriate[27] provisions of the Uniform Child Custody Jurisdiction Act are utilized.

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[24] 126 Cong. Rec. H12500 (daily ed. Dec. 13, 1980).

[25] Cf. Bradley v. School Board of Richmond, 416 U.S. 696, 40 L.Ed. 2d 476, 94 S. Ct. 2006 (1974).

[26] See Rice v. Sioux City Memorial Park Cemetery, 349 U.S. 70, 99 L.Ed. 897, 75 S.Ct. 614 (1954).

[27] During oral argument, Respondent called Sections 19(b) and 20(c) (F.S.A. §61.134(2), Ga. Code Ann. §74-520(b) and F.S.A. §61.1342(3), Ga. Code Ann. §74-521(c)) to the Court's attention as setting forth a procedure under the Uniform Act for acquiring personal jurisdiction over a non-resident. This procedure is somewhat like that found in the Uniform Reciprocal Enforcement of Support Act of 1968, which was tacitly approved by this Court in Kulko v. California, 436 U.S. 84, 56 L.Ed.2d 132, 98 S. Ct. 1690 (1978), see especially footnotes 13 and 14. As suggested by Justice Brennan during oral argument, Sections 19(b) and 20(c) would be available to petitioner in connection with any future litigation should she choose to use them.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing Supplemental Brief of Respondent upon Petitioner and attorneys for Amici Curiae by depositing a copy of same in the United States mail with first-class postage paid addressed as follows:

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